

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK: SYRACUSE DIVISION

UNITED STATES OF AMERICA  
and the STATE of NEW YORK *ex*  
*rel.* Dr. HELENE BERNSTEIN, MD,  
PHD,

*Plaintiff,*

v.

Dr. ROBERT SILVERMAN,  
UNIVERSITY OB/GYN  
ASSOCIATES, INC., CROUSE  
HEALTH HOSPITAL, INC., &  
CROUSE HEALTH SYSTEM, INC.,

*Defendants.*

Civil Action No.  
5:20-cv-00630 (MAD/ATB)

**DEFENDANTS CROUSE HEALTH HOSPITAL, INC.'S AND CROUSE HEALTH  
SYSTEM, INC.'S RESPONSE TO PLAINTIFF RELATOR'S  
MOTION FOR LEAVE TO AMEND**

Defendants Crouse Health Hospital, Inc., and Crouse Health System, Inc. (collectively “Crouse”) respectfully submit this response to Plaintiff Relator's (“Relator”) Motion for Leave to Amend her Complaint.

Crouse does not oppose Relator's Motion to Amend given the liberal amendment standard under Fed. R. Civ. P. 15(a)(2),<sup>1</sup> but does intend to move to dismiss the proposed Amended

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<sup>1</sup> On Friday, November 3, 2023 at 2:05 p.m., Relator's counsel emailed Defendants' counsel a copy of the proposed amended complaint and exhibits and asked Defendants' counsel to inform him by 12pm on Monday, November 6, 2023, the date that his response to Defendants' pending motions to dismiss was due after months of extensions, whether Defendants would assent to a motion to amend. This gave Defendants' counsel less than one business day

Complaint for many of the same reasons articulated in its pending motion to dismiss the operative complaint, as well as for additional reasons prompted by the changes reflected in the proposed Amended Complaint which only exacerbate the existing pleading deficiencies. Crouse will not brief the merits in the context of this response (and will reserve responding to the merits arguments offered by Relator at pages 5 through 8 of her Motion to Amend until Crouse files its Motion to Dismiss), except to note that none of the patient records Relator attaches as exhibits to the proposed amended complaint concern or relate to Crouse. Most concern an entity, Upstate University Hospital, that is not even a defendant in this case. These documents do nothing to cure Relator's pleading deficiencies. She still fails to allege any information about even a single patient who received a fetal nonstress test —the only tests that Relator alleges Crouse was involved with—at Crouse or any claim associated with a fetal nonstress test that was purportedly submitted by Crouse to any Government Payor, much less a false or fraudulent claim.

For these and many other reasons, the proposed Amended Complaint remains deficient and while Crouse does not oppose its filing, Crouse intends to move to dismiss it and proposes the following briefing schedule, which should accommodate Relator's counsel's concerns about his client's opposition brief being due while he is out of the country over the New Year's holiday:

- Motions to Dismiss Due: 30 days from the date that the Amended Complaint is filed following the Court's ruling on Relator's Motion to Amend.
- Oppositions to Motions to Dismiss Due: 30 days from the date the Motions to Dismiss are filed.
- Replies to Motions to Dismiss Due: 14 days from the date the Oppositions are filed.

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to review the amended pleading and exhibits and confer with their clients, and assumed that Defendants' counsel had availability to address these matters in the short window that Relators' counsel imposed.

Given that Defendants have already submitted extensive briefing in connection with their original Motions to Dismiss, Defendants respectfully request that the parties be relieved of the obligation to serve the pre-motion letters required by Rule 2(a) of Judge D'Agostino's Individual Rules and Practices.

Counsel for Crouse has conferred with counsel for Defendants Dr. Robert Silverman ("Dr. Silverman") and University OB/GYN Associates, Inc. ("University OB/GYN") who have also indicated that their clients do not oppose the filing of the proposed Amended Complaint, that they intend to move to dismiss it as well, and that they agree with the foregoing proposed schedule.

Dated: November 7, 2023

Respectfully Submitted,

By: /s/ Laura McLane  
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*Attorneys for Crouse Health Hospital, Inc. and  
Crouse Health System, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2023 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

<p><b><i>Attorneys for Plaintiffs:</i></b>  Darth M. Newman  Law Offices of Darth M. Newman LLC  1140 Thorn Run Road  Suite 601  Coraopolis, PA 15108  412-436-3443  Email: <a href="mailto:darth@dnewmanlaw.com">darth@dnewmanlaw.com</a></p> <p>Jonathan W. Ferris  Thomas, Solomon Law Firm  693 East Avenue  Rochester, NY 14607  585-272-0540  Email:  <a href="mailto:jferris@theemploymentattorneys.com">jferris@theemploymentattorneys.com</a></p> <p><b><i>Attorney for USA:</i></b>  Carl G. Eurenus  U.S. Attorney's Office-Syracuse  P.O. Box 7198  100 South Clinton Street  Syracuse, NY 13261-7198  315-448-0663  Email: <a href="mailto:carl.eurenus@usdoj.gov">carl.eurenus@usdoj.gov</a></p> <p><b><i>Attorney for The State of New York</i></b>  Emily Auletta  New York State Attorney General- Albany  The Capitol  Albany, NY 12224  518-776-2342  Email: <a href="mailto:emily.auletta@ag.ny.gov">emily.auletta@ag.ny.gov</a></p>	<p><b><i>Attorney for University OB/GYN Associates, Inc.</i></b>  Laura L. Spring  CCBLaw PLLC  507 Plum Street, Suite 310  Syracuse, New York 13204  Telephone: (315)-477-6293  Email: <a href="mailto:lspring@ccblaw.com">lspring@ccblaw.com</a></p> <p><b><i>Attorney for Dr. Robert Silverman</i></b>  David G. Burch, Jr.  Barclay Damon Tower  125 East Jefferson Street  Syracuse, New York 13202  Telephone: (315)-425-2788  Email: <a href="mailto:dburch@barclaydamon.com">dburch@barclaydamon.com</a></p>
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*/s/ Laura McLane*